DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 06-0188, 06-0189
International Fuel Tax Agreement (IFTA) and
International Registration Plan (IRP)
Tax Period: 2003 - 2004

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ISSUES

I. IRP – Assessment

Authority: IC 6-8.1-5-1(b), IC 6-6-4.1-14, IC 6-8.1-3-14; IRP 1500, IRP 1502; IRP Information Handbook; IRP Audit Procedures Manual 603.

Registrant protests auditor's assessment in which 100 percent of the miles driven were allocated to Indiana.

II. IFTA – Assessment

Authority: IFTA article A550; IC 6-8.1-5-1(b).

Taxpayer protests the IFTA audit assessment resulting from Taxpayer's lack of fuel tax documentation.

III. Tax Administration – Ten Percent Negligence Penalty

Authority: IC 6-8.1-10-2.1; 45 IAC 15-11-2(b); 45 IAC 15-11-2(c).

The Taxpayer protests the imposition of the negligence penalty.

STATEMENT OF FACTS

Registrant/taxpayer is in the business of repairing and rebuilding trucks. This operation mostly involves paint and body work. Registrant/taxpayer also established a side business, whereby it would haul cars for another company. Four rollback trucks were leased for this business, to go along with two "wreckers" and a tractor trailer that registrant/taxpayer already owned. It operated these trucks from an Indiana location. Trips were also made to other states to pick up cars and trucks for the other company.

Registrant/taxpayer was assessed tax as a result of an IFTA and IRP audit covering the period between 2003 and 2004. The audit concluded that registrant/taxpayer's records detailing the number of miles registrant/taxpayer's trucks operated within Indiana and other states were inadequate. Accordingly, the audit assessed a penalty in which 100 percent of the miles driven were allocated to Indiana. The audit also determined that the registrant/taxpayer did not maintain documentation sufficient to arrive at a conclusive determination of the registrant/taxpayer's fuel tax liability. In the absence of that documentation, the audit based its determination of the additional fuel tax liability upon the "best information available," and assessed liability using a four mile-per-gallon fuel consumption rate.

Registrant/taxpayer submitted a protest of the assessments, and an administrative hearing was conducted. This Letter of Findings is the result.

I. IRP – Record Keeping

DISCUSSION

Under IC 6-8.1-5-1(b), a "notice of proposed assessment is *prima facie* evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made."

The IRP is a program for registering commercial vehicles that operate within member jurisdictions, including Indiana. The Indiana Code permits Indiana to join the IRP agreement via IC 6-6-4.1-14 and IC 6-8.1-3-14. IC 6-6-4.1-14 states in relevant part:

> The commissioner or, with the commissioner's approval, the reciprocity commission created by IC 9-28-4 may enter into the International Registration Plan, the International Fuel Tax Agreement, or other reciprocal agreements with the appropriate official or officials of any other state or jurisdiction to exempt commercial motor vehicles licensed in the other state or jurisdiction from any of the requirements that would otherwise be imposed by this chapter . . .

IC 6-8.1-3-14 states in relevant part:

> The department, on behalf of the state, may enter into and become a member of the International Fuel Tax Agreement or other reciprocal agreements providing for the imposition of motor fuel taxes on an apportionment or allocation basis with the proper authority of any state . . .

Registrant claims that someone at the Department of Transportation informed registrant that it only needed to keep mileage records for thirty days. Despite what anyone at the Department of Transportation told it, the Department of Revenue's position – that it is the registrant's duty to keep adequate records at all times – is well established. The IRP Information Handbook states that:

> Operational records must document the distance traveled in each jurisdiction and the Total Distance traveled. Examples include fuel reports, trip permits, logs or computer runs that can be supported by source documents when requested by the base jurisdiction. An acceptable source document to verify fleet distance is some type of Individual Vehicle Distance Record (IVDR) (your log books). IVDR's must contain the following basic information:
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> • the starting and end dates of the trip;
> • the trip origin and destination by city and state;
> • the route of travel and/or the beginning and ending odometer or hub-o-meter readings;
> • the total trip distance;
> • the distance by jurisdiction;
> • the unit number or vehicle identification number (VIN);
> • the vehicle fleet number;
> • the registrant's name;
> • the Trailer unit number; and
> • the driver's signature and printed name.
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> An IVDR must be completed for all vehicle movement.

Additionally, IRP 1500 makes it clear that:

> Any registrant whose application for apportioned registration has been accepted shall preserve the records on which it is based for a period of three years after the close of the registration year. Such records shall be made available to the Commissioner at his request for audit as to accuracy of computation, payments, and assessment for deficiencies or allowances for credits, during the normal business hours of the day.

IRP 1502 goes on to state that:

> If any registrant fails to make records available to the Commissioner upon proper request or if any registrant fails to maintain records from which true liability may be determined, the Commissioner may, thirty days after written demand for an availability of records or notification of insufficient records, impose an assessment of liability based on the Commissioner's estimate of the true liability of such registrant as determined from information furnished by the registrant, information gathered by the Commissioner at his own instance, information available to the Commissioner concerning operations by similar registrants and such other pertinent information as may be available to the Commissioner.

Registrant's original reported mileage was apportioned between Indiana and surrounding jurisdictions. Upon requests by auditors for documentation of such apportionment, all that the registrant could provide were fuel receipts and logs that did not list the appropriate mileage. Thus, the auditor determined that registrant's records were inadequate for apportionment of

mileage between the jurisdictions and assessed 100 percent of the mileage to Indiana. The auditor made partial allocations to the other states that registrant trucks drove through as reported by registrant. Registrant is protesting these adjustments.

IRP Audit Procedures Manual 603 states in relevant part:

> As part of the initial audit procedures, the auditor requests the records that support apportioned registration application as filed. These records are the same records discussed during the initial contact with the registrant or registrant's agent. *If adequate records are not made available thirty days after notice is given, the registrant may be assessed the potential liability due to all jurisdictions or the registrant may be assessed 100 percent registration fees for the base jurisdiction.* Penalties may be imposed in addition to the estimated liability amounts in accordance with the laws of the base jurisdiction … *(emphasis added).*

Registrant conceded at the hearing that there was no legal basis for its protest. It was admitted that the logs that registrant presented showed odometer readings, but that registrant did not break the readings down for interstate miles. In fact, no mileage records existed for any cab that the registrant ran during this period. This omission was in contravention of the statutes and of the handbook that every person who has signed with IRP should possess or have access through the internet. Registrant has not met its burden of proof pursuant to IC 6-8.1-5-1(b).

FINDING

Registrant's protest is respectfully denied.

II. IFTA – Assessment

DISCUSSION

Taxpayer challenges the four mile-per-gallon fuel consumption rate employed by the audit. Taxpayer argues that it can now provide gas receipts that will demonstrate that his vehicles currently obtain significantly better fuel economy and the current figures should be used to arrive at a projection of fuel consumption – for the tax years at issue – more favorable to the taxpayer.

IFTA article A550 requires that in the absence of adequate records, a standard four mile-per-gallon rate can be used to compute total fuel consumption. The use of a four mile-per-gallon rate is also explicitly allowed under IC 6-6-4.1-9 which states that

> [i]f there are no records showing the number of miles actually operated per gallon of motor fuel and if section 11(c) of this chapter is inapplicable, it is presumed for purposes of this chapter that one (1) gallon of motor fuel is consumed for every (4) miles traveled.

Taxpayer submitted sufficient evidence during the hearing to prove that his four rollback trucks got a base mileage of 9 miles-per-gallon. Taxpayer has therefore met its burden of proof to the

satisfaction of the Department pursuant to IC 6-8.1-5-1(b), and its protest is sustained subject to a calculation of liability based on a 9 miles-per-gallon base mileage for the four rollback vehicles.

FINDING

Taxpayer's protest is sustained.

III. Tax Administration – Ten Percent Negligence Penalty

DISCUSSION

The taxpayer protests the imposition of the ten percent negligence penalty pursuant to IC 6-8.1-10-2.1. Indiana Regulation 45 IAC 15-11-2 (b) clarifies the standard for the imposition of the negligence penalty as follows:

> Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The standard for waiving the negligence penalty is given at 45 IAC 15-11-2(c) as follows:

> The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:
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> (1) the nature of the tax involved;
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> (2) judicial precedents set by Indiana courts;
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> (3) judicial precedents established in jurisdictions outside Indiana;
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> (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc;

(5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

The taxpayer established that its failure to pay the assessed tax was due to reasonable cause rather than negligence.

FINDING

The taxpayer's protest to the imposition of penalty is sustained.

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